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PROTOCOL TO AMEND THE 1980 TAX CONVENTION WITH THE KINGDOM OF DENMARK

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE PROTOCOL, SIGNED AT WASHINGTON ON AUGUST 23, 1983, TOGETHER WITH AN EXCHANGE OF LETTERS, AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT WASHINGTON ON JUNE 17, 1980

NOVEMBER 17, 1983.—Protocol was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

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S385-12.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 16, 1983.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification, the Protocol amending the Convention between the Government of the United States of America and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Washington on June 17, 1980. The Protocol was signed at Washington on August 23, 1983, together with an exchange of letters. I also transmit the report of the Department of State on the Protocol.

The Senate Committee on Foreign Relations deferred consideration of the Convention pending the negotiation of amendments to certain of its provisions. The Protocol takes into account recent changes in Danish tax laws. It also takes into account positions expressed by the Senate in its recent consideration of other United States income tax treaties.

I recommend that the Senate give early and favorable consideration to the Protocol and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, November 9, 1983.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Protocol amending the Convention between the Government of the United States of America and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Washington on June 17, 1980. The Protocol was signed at Washington on August 23, 1983, together with a related exchange of letters.

At the request of the Department of the Treasury, the Senate Committee on Foreign Relations has delayed its consideration of the Convention, pending the negotiation of amendments of certain provisions to reflect recent changes in Danish tax laws.

The Protocol specifies that the dividend tax credit extended by Denmark to United States shareholders in Danish corporations under the proposed Convention will be equal to 15 percent of the gross dividend in the case of portfolio shareholders and 5 percent of the gross dividend in the case of dividends from subsidiary corporations, as defined in Article 10 of the proposed Convention. As previously drafted, the credit available to United States shareholders was expressed as a proportion of the credit available to Danish resident individuals. As a result, the treaty credit would vary with changes in the Danish statutory credit. The Protocol fixes the credit at the rates agreed to when the Convention was signed. The effect of the credit is to reduce the Danish withholding tax on dividends to United States shareholders to an effective rate of 2.25 percent on portfolio dividends and 0.25 percent on subsidiary dividends.

The Protocol also provides a foreign tax credit for the Danish tax on oil and gas extraction income, subject to a special limitation which restricts the credit for such taxes to the United States tax on Danish oil and gas extraction income. This provision is comparable to the treaty credits for United Kingdom and Norwegian oil taxes. Although such special credits are no longer part of United States treaty policy, fairness required giving Denmark the same treatment afforded to its North Sea competitors.

The Protocol also provides that a drilling rig used in Denmark by a United States company (and coversely) does not constitute a permanent establishment unless it remains there longer than twelve months. This provision will benefit United States drillers operating in the Danish sector of the North Sea.

Other provisions of the Protocol reflect the views of the Senate as expressed in its consideration of other recent United States tax treaties. For example, the Protocol includes an article limiting the benefits of the Convention to residents of the two countries, conforms the language on capital gains taxation to recently enacted provisions of United States law, and authorizes the General Accounting Office to obtain certain tax information relevant to its function of overseeing the administration of United States tax law.

An exchange of letters clarifies understandings with respect to the implementation of certain provisions of the Protocol.

The Protocol will enter into force when the Contracting States have notified each other through diplomatic channels that their respective constitutional requirements have been met. Its provisions will have effect:

(a) in respect of credits against United States tax allowed pursuant to Articles 2 and 10 of the Protocol, for taxable years beginning on or after January 1, 1983;

(b) In respect of taxation of dividends at source, for dividends paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force; and

(c) in respect of taxation of other inome, for taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force.

A technical memorandum explaining in detail the provisions of the Protocol is being prepared by the Department of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Protocol. It has the approval of both Departments.

Respectfully submitted.

LAWRENCE S. EAGLEBURGER.

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT WASHINGTON ON JUNE 17, 1980

The Government of the United States of America and the Government of the Kingdom of Denmark, desiring to conclude a Protocol to amend the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Washington on June 17, 1980, have agreed as follows:

ARTICLE 1

1. The last sentence of paragraph 3 of Article 1 (Personal Scope) shall be deleted and replaced by the following:

"For this purpose the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss."

2. In paragraph 4(b) of Article 1, the reference to "paragraph 1 of Article 21 (Students and Trainees)" is changed to "Article 21 (Students and Trainees)".

ARTICLE 2

Paragraph 1 of Article 2 (Taxes Covered) is deleted and replaced by the following:

"1. The existing taxes to which this Convention applies are:

"(a) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax and the personal holding company tax); and the tax imposed on insurance premiums paid to foreign insurers (but only to the extent that the foreign insurer does not reinsure the risks in question with a person not entitled to relief from such tax under this or another Convention); and the taxes imposed with respect to private foundations.

"(b) in Denmark: national income taxes, including taxes imposed under the Hydrocarbon Tax Act, and municipal income taxes."

ARTICLE 3

Paragraph 3 of Article 5 (Permanent Establishment) shall be deleted and replaced by the following:

"3. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, constitutes a permanent establishment only if it lasts more than 12 months."

ARTICLE 4

Paragraph 3 of Article 10 (Dividends) shall be deleted and replaced by the following:

"3. As long as an individual resident in Denmark is entitled under Danish law to a tax credit (skattegodtgorelse) in respect of dividends paid by a company which is a resident of Denmark, paragraph 2 of this Article shall not apply to dividends beneficially owned by a resident of the United States. In these circumstances, the following rules shall apply:

"(a) Subject to the provisions of subparagraph (b) of this paragraph, the beneficial owner of such dividends shall be entitled to a tax credit in respect thereof equal to 15 percent of the gross amount of such dividends; however, tax may also be charged in Denmark and according to the laws of Denmark on the aggregate of the amount of such dividends and the amount of that tax credit, at a rate not exceeding 15 percent.

"(b) Where the beneficial owner of the dividends is a company which holds directly at least 25 percent of the share capital of the company paying the dividends, the beneficial owner of such dividends shall be entitled to a tax credit in respect thereof equal to 5 percent of the gross amount of such dividends; however, tax may also be charged in Denmark and according to the laws of Denmark on the aggregate of the amount of such dividends and the amount of that tax credit, at a rate not exceeding 5 percent.

"(c) The aggregate of the amount of the dividends and the amount of the tax credits referred to in subparagraphs (a) and (b) of this paragraph (without reduction for the 15 or 5 percent tax, as the case may be, by Denmark) shall be treated as a dividend to the resident of the United States for United States tax credit purposes."

ARTICLE 5

The first sentence of paragraph 4 of Article 11 (Interest) shall be deleted and replaced by the following:

"4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount."

ARTICLE 6

The first sentence of paragraph 4 of Article 12 (Royalties) shall be deleted and replaced by the following:

"4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right, or information for which they are paid, exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount."

ARTICLE 7

1. Paragraph 1 of Article 13 (Capital Gains) shall be deleted and replaced by the following:

"1. Gains derived by a resident of a Contracting State from the disposition of real property situated in the other Contracting State may be taxed in that other State."

2. Paragraph 2 of Article 13 (Capital Gains) shall be deleted and replaced by the following:

"2. For the purposes of this Article:

"(a) the term "real property situated in the other Contracting State," where the United States is that other Contracting State, includes a United States real property interest, and real property referred to in Article 6 (Income from Real Property) which is situated in the United States; and

"(b) the term "real property," in the case of Denmark, includes real property referred to in Article 6 (Income from Real Property) and interests in such property."

3. Paragraph 5 of Article 13 (Capital Gains) shall be renumbered as paragraph 6 and amended, and a new paragraph 5 is added, as follows:

"5. Gains derived by an enterprise of a Contracting State from the deemed alienation of assets described in paragraph 3 of Article 5 (Permanent Establishment) and used for the exploration for or exploitation of oil and gas resources, shall be taxable only in that State.

"6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4, and 5, shall be taxable only in the Contracting State of which the alienator is a resident."

ARTICLE 8

Article 17 (Investment or Holding Companies) shall be deleted and replaced by the following:

"ARTICLE 17

"Limitation of Benefits

"1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Convention to relief from Taxation in the other Contracting State unless:

"(a) (i) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:

"(A) individuals who are residents of one of the Contracting States;

"(B) citizens of the United States;

"(C) companies as described in subparagraph (b); and

"(D) one of the Contracting States, its political subdivisions or local authorities; and

"(ii) in the case of relief from taxation under Articles 10 (Dividends), 11 (Interest), 12 (Royalties), or 22 (Other Income), not more than 50 percent of the gross income of such person is used to make payments of interest to persons who are other than persons

described in clauses (A) through (D) of subparagraph (a)(i), whether directly or indirectly; or

"(b) it is a company which is a resident of a Contracting State and in whose principal class of shares there is substantial and regular trading on a recognized stock exchange.

"2. Paragraph 1 shall not apply if the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as a principal purpose the purpose of obtaining benefits under the Convention.

"3. For the purposes of paragraph 1(b), the term 'a recognized stock exchange' means:

"(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934; and

"(b) the Copenhagen Stock Exchange; and

"(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

"4. Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of this Article, the competent authorities of the Contracting States shall consult each other."

ARTICLE 9

Paragraph 2 of Article 21 (Students and Trainees) shall be deleted.

ARTICLE 10

1. Paragraph 1 of Article 23 (Relief from Double Taxation) shall be deleted and replaced by the following:

"1. In the case of the United States, double taxation shall be avoided as follows:

"(a) In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income the appropriate amount of income taxes imposed by Denmark; and, in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Denmark from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of income taxes imposed by Denmark on the company which is a resident of Denmark with respect to the profits out of which such dividends are paid. For purposes of applying the United States credit in relation to taxes paid or accrued to Denmark, the Danish taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered) shall be considered to be income taxes, and shall be allowed as a credit against the United States tax on income, subject to the provisions of subparagraph (b).

"(b) The appropriate amount allowed as a credit by the United States shall be based upon the amount of income taxes paid or accrued to Denmark. However, the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources outside of the United States) provided by United States law for the taxable year. In addition, in the case of income taxes paid or accrued to Denmark by persons subject to the hydrocarbon tax imposed under the Hydrocarbon Tax Act referred to in subparagraph 1(b) of Article 2 (Taxes Covered), or to a substantially similar tax, the appropriate amount allowed as a credit by the United States shall be limited to the amount of income taxes paid or accrued to Denmark attributable to Danish source taxable income in the following way:

"(i) with respect to income taxes paid or accrued to Denmark on oil and gas extraction income from oil or gas wells in Denmark, the amount to be allowed as a credit for a taxable year shall not exceed the product of:

"(a) the amount of such income, and

"(b) in the case of a corporation, the maximum statutory United States tax rate applicable to a corporation for such taxable year, or

"(c) in the case of an individual, the individual's average United States tax rate with respect to the individual's entire taxable income for such taxable year.

"(ii) further, the amount of income taxes paid or accrued to Denmark on oil and gas extraction income from oil or gas wells in Denmark that is not allowable as a credit under subparagraph (i) shall be deemed to be income taxes paid or accrued in such prior or succeeding taxable years, if any, as are specified by the provisions of United States law relating to the carryover and carryback of foreign tax credits and shall be allowable as a credit in the year in which it is deemed paid or accrued subject to the limitation in subparagraph (i)."

2. The last sentence of paragraph 2 of Article 23 (Relief from Double Taxation) shall be deleted and replaced with the following:

"This paragraph shall not apply to a former United States citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax."

3. Subparagrah 3(a) of Article 23 shall be deleted and replaced by the following:

"(a) subject to the provisions of subparagraph (c), when a resident of Denmark derives income which, in accordance with the provisions of this Convention may be taxed in the United States (other than solely by reason of citizenship), Denmark shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the United States (other than solely by reason of citizenship); and in the case of a Danish company owning at least 25 percent of the share capital of a company which is a resident of the United States from which it receives dividends in any taxable year, Denmark shall allow as a deduction from the tax on the income of that company the appropriate amount of income tax paid in the United States by the company which is a resident of the United States with respect to the profits out of which such dividends are paid."

ARTICLE 11

Paragraph 1 of Article 26 (Exchange of Information) shall be deleted and replaced by the following:

"1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning the taxes to which this Convention applies insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Convention applies. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions."

ARTICLE 12

Subparagraph 2(a) of Article 29 (Entry Into Force) shall be deleted and replaced by the following:

"(a) in respect of taxation of dividends at source, for dividends paid or credited on or after the first day of the second month next following the date on which the Convention enters into force."

ARTICLE 13

1. The Governments of the Contracting States shall notify each other through diplomatic channels when the constitutional requirements for the entry into force of this Protocol have been satisfied.

2. This Protocol shall enter into force on the receipt of the latter of the notifications referred to in paragraph 1, and its provisions shall have effect:

(a) in respect of credits against United States tax allowed pursuant to Articles 2 and 10 of this Protocol, for taxable years beginning on or after January 1, 1983;

(b) in respect of taxation of dividends at source, for dividends paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force; and

(c) in respect of taxation of other income, for taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force.

DONE at Washington in duplicate, in the English and Danish languages, the two texts having equal authenticity, this twenty-third day of August 1983.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

BERYL W. SPRINKEL.

FOR THE GOVERNMENT OF THE KINGDOM OF DENMARK:

ISI FOIGHEL.

THE SECRETARY OF THE TREASURY,
Washington, August 23, 1983.

His Excellency, DR. ISI FOIGHEL,
Minister of Taxation of Denmark.

EXCELLENCY: I have the honor to acknowledge the receipt of your letter of August 23, 1983, which reads as follows:

"I have the honor to refer to the Protocol amending the Convention between the Government of the Kingdom of Denmark and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Washington on June 17, 1980, which Protocol was signed today, and to confirm certain understandings reached between our two Governments with respect to the Protocol.

"1. In the course of the discussions concerning Article 8 of the Protocol, my Government recognized that an efficient administration of the provisions of that Article is an important consideration. My Government expressed its willingness to review the administration of Article 8 of the Protocol with your Government after a reasonable period of time, and, if desirable and appropriate, to amend the provisions of that Article by a Protocol providing that an agreement of the competent authorities of our two countries is a precondition of denying treaty benefits. In addition, it is our understanding that a failure in a particular case to comply with the provisions of paragraph 4 of Article 8 will not result in a granting of benefits under the Convention where those benefits would otherwise be denied.

"2. With respect to paragraph 2 of Article 7 of the Protocol, I would like to confirm that, with respect to a United States company, such company is treated under United States law as a United States real property holding corporation if the value of its United States real property interests equals or exceeds 50 percent of the value of such interests, its interests in real property located outside the United States, and any other of its assets which are used or held for use in a trade or business.

"3. The provision of the last part of paragraph 3, Article 10, in accordance with which Denamrk permits a tax credit for the tax paid by a U.S. corporation paying a dividend to a Danish company shall apply only in those cases where the dividends have been included in the taxable income of the Danish parent company."

I confirm these understandings on behalf of the Government of the United States of America. These understandings constitute an agreement between our two Governments on this matter, which will enter into force on the date of entry into force of the Protocol which was signed today.

Accept, Excellency, the renewed assurance of my highest consideration.

For the Acting Secretary of the Treasury:

BERYL W. SPRINKEL.

WASHINGTON, D.C., *August 23, 1983.*

The Honorable R. T. MCNAMAR,
Acting Secretary of the Treasury.

EXCELLENCY: I have the honor to refer to the Protocol amending the Convention between the Government of the Kingdom of Denmark and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Washington on June 17, 1980, which Protocol was signed today, and to confirm certain understandings reached between our two Governments with respect to the Protocol.

1. In the course of the discussions concerning Article 8 of the Protocol, my Government recognized that an efficient administration of the provisions of that Article is an important consideration. My Government expressed its willingness to review the administration of Article 8 of the Protocol with your Government after a reasonable period of time, and, if desirable and appropriate, to amend the provisions of that Article by a Protocol providing that an agreement of the competent authorities of our two countries is a precondition of denying treaty benefits. In addition, it is our understanding that a failure in a particular case to comply with the provisions of paragraph 4 of Article 8 will not result in a granting of benefits under the Convention where those benefits would otherwise be denied.

2. With respect to paragraph 2 of Article 7 of the Protocol, I would like to confirm that, with respect to a United States company, such company is treated under United States law as a United States real property holding corporation if the value of its United States real property interests equals or exceeds 50 percent of the value of such interests, its interests in real property located outside the United States, and any other of its assets which are used or held for use in a trade or business.

3. The provision of the last part of paragraph 3, Article 10, in accordance with which Denmark permits a tax credit for the tax paid by a U.S. corporation paying a dividend to a Danish company shall apply only in those cases where the dividends have been included in the taxable income of the Danish parent company.

Accept, Excellency, the assurances of my highest consideration.

ISI FOIGHEL,
Minister of Taxation of Denmark.

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